

NOTE: This order is nonprecedential.

**United States Court of Appeals for the Federal Circuit**



2007-1045

1:05cv39

PFIZER, INC.,

Plaintiff-Appellee,

v.

SYNTHON HOLDINGS BV, SYNTHON BV,  
SYNTHON PHARMACEUTICALS, LTD.  
(now known as Synthon Pharmaceuticals, Inc.),  
and SYNTHON LABORATORIES, INC.,

Defendants-Appellants.

Before GAJARSA and PROST, Circuit Judges, and OTERO, District Judge.

GAJARSA, Circuit Judge.

**ORDER**

Defendants Synthon Holdings BV, Synthon BV, Synthon Pharmaceuticals, Inc., and Synthon Laboratories, Inc. (collectively, "Synthon") appeal from judgment by the United States District Court for the Middle District of North Carolina, which held that Claims 1-3 of U.S. Patent No. 4,879,303 ("the '303 patent") asserted by plaintiff Pfizer, Inc. ("Pfizer") are valid and infringed. The district court ordered that Synthon would not

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Honorable S. James Otero, District Judge, United States District Court for the Central District of California, sitting by designation.

be allowed to market the pharmaceutical product that was the subject of the Abbreviated New Drug Application ("ANDA") at issue in this case until the '303 patent and its period of pediatric exclusivity expired.

On March 22, 2007, this court decided Pfizer, Inc. v. Apotex, Inc., No. 2006-1261 ("Apotex"), which held invalid as obvious the same three claims Pfizer asserts against Synthon. Counsel for Pfizer conceded at oral argument that if the court issued its mandate in Apotex without altering the holding, Pfizer would be collaterally estopped from arguing in this case that Claims 1-3 are not invalid.<sup>1</sup> See Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found., 402 U.S. 313 (1971); Pharmacia & Upjohn Co. v. Mylan Pharms., Inc., 170 F.3d 1373, 1379 (Fed. Cir. 1999). Pfizer's petitions in Apotex for panel rehearing and rehearing en banc have since been denied, and the court issued its mandate on May 21, 2007. Collateral estoppel now compels a finding that the claims are invalid.

Upon consideration thereof,

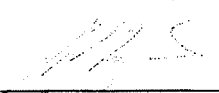
IT IS ORDERED THAT:

The district court's determination that Claims 1-3 of the '303 patent are not invalid is reversed. The order barring Synthon from marketing its ANDA product is vacated.

FOR THE COURT

JUN 5 - 2007

Date

  
Arthur J. Gajarsa  
Circuit Judge

<sup>1</sup> Oral Arg. at 15:47-16:03, available at <http://www.ca9c.uscourts.gov/oralarguments/mp3/07-1045.mp3>.